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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-2028

PEGGY ERNA MUILWIJK
2825 Melbourne Drive
San Diego, CA 92123

A C C U S A T I O N

Respiratory Care Practitioner
License No. 9901

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about October 17, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License No. 9901 to PEGGY ERNA MUILWIJK (Respondent). The Respiratory Care Practitioner License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2007, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

" . . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

" . . .

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).

" . . . "

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1 7. Section 3750.5 of the Code states:

2 "In addition to any other grounds specified in this chapter, the board may deny,
3 suspend, or revoke the license of any applicant or license holder who has done any of the
4 following:

5 "(a) Obtained or possessed in violation of law, or except as directed by a
6 licensed physician and surgeon, dentist, or podiatrist administered to himself or
7 herself, or furnished or administered to another, any controlled substances as
8 defined in Division 10 (commencing with Section 11000) of the Health and Safety
9 Code, or any dangerous drug as defined in Article 2 (commencing with section
10 4015) of Chapter 9.

11 "(b) Used any controlled substance as defined in Division 10 (commencing
12 with Section 11000) of the Health and Safety Code, or any dangerous drug as
13 defined in Article 2 (commencing with section 4015) of Chapter 9.

14 ". . .

15 "(d) Been convicted of a criminal offense involving the consumption or
16 self-administration of any of the substances described in subdivisions (a) and (b), or
17 the possession of, or falsification of a record pertaining to, the substances described
18 in subdivision (a), in which event the record of the conviction is conclusive
19 evidence thereof.

20 ". . . "

21 8. Section 3752 of the Code states:

22 "A plea or verdict of guilty or a conviction following a plea of nolo
23 contendere made to a charge of any offense which substantially relates to the
24 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
25 a conviction within the meaning of this article. The board shall order the license
26 suspended or revoked, or may decline to issue a license, when the time for appeal
27 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
28 order granting probation is made suspending the imposition of sentence,

1 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
2 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
3 setting aside the verdict of guilty, or dismissing the accusation, information, or
4 indictment.”

5 9. Section 492 of the Code states:

6 “Notwithstanding any other provision of law, successful completion of any
7 diversion program under the Penal Code, or successful completion of an alcohol and drug problem
8 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
9 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
10 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
11 division, from taking disciplinary action against a licensee or from denying a license for
12 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
13 record pertaining to an arrest.

14 “ This section shall not be construed to apply to any drug diversion program
15 operated by any agency established under Division 2 (commencing with Section 500) of this code,
16 or any initiative act referred to in that division.”

17 10. California Code of Regulations (CCR), title 16, section 1399.370, states:

18 “ For the purposes of denial, suspension, or revocation of a license, a crime
19 or act shall be considered to be substantially related to the qualifications, functions
20 or duties of a respiratory care practitioner, if it evidences present or potential
21 unfitness of a licensee to perform the functions authorized by his or her license or in
22 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts
23 shall include but not be limited to those involving the following:

24 “ (a) Violating or attempting to violate, directly or indirectly, or assisting or
25 abetting the violation of or conspiring to violate any provision or term of the Act.

26 “ . . . ”

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1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

3 "In any order issued in resolution of a disciplinary proceeding before the board, the
4 board or the administrative law judge may direct any practitioner or applicant found to have committed
5 a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and
6 prosecution of the case. . . ."

7 12. Section 3753.7 of the Code states:

8 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall include
9 attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,
10 and service fees."

11 13. Section 3753.1 of the Code states, in pertinent part:

12 "(a) An administrative disciplinary decision imposing terms of probation may include,
13 among other things, a requirement that the licensee-probationer pay the monetary costs associated with
14 monitoring the probation. "

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction of a Crime)

17 14. Respondent is subject to disciplinary action under Code sections 3750(d),
18 3750(g), 3752, and 492, in that she was convicted of a crime substantially related to the
19 qualifications, functions, or duties of a respiratory care practitioner. The circumstances are as
20 follows:

21 A. On or about November 3, 2005, Respondent was contacted by the
22 Harbor Police for possession of Methamphetamine and drug paraphernalia at the
23 San Diego Airport Terminal 1. During a screening process, a Transportation
24 Security Administration (TSA) employee found a glass pipe with a bulbous end
25 containing black residue inside a coin purse belonging to Respondent. Respondent
26 admitted to the TSA employee that she also had methamphetamine inside her wallet
27 and in her right front pocket. Respondent admitted to Harbor Police Officer
28 Ramirez (Officer Ramirez) that the two bags of methamphetamine she was carrying

1 belonged to her. Respondent further admitted to Officer Ramirez that she had been
2 using methamphetamine for the past year in order to stay awake when she worked
3 long hours as a nurse at Grossmont Hospital and that she uses methamphetamine at
4 least five times per month. Respondent was subsequently arrested.

5 B. On or about November 10, 2005, a felony Complaint was filed in
6 Superior Court of California, County of San Diego, Central Division, entitled *The*
7 *People of the State of California v. Peggy Ern Muilwijk*, Case No. CD 194839,
8 charging Respondent with one count of possessing a controlled substance, to wit:
9 methamphetamine, violating Health and Safety Code section 11377(a) [Count 1-
10 possession of a controlled substance] and one count of possessing paraphernalia
11 used for narcotics violating Health and Safety Code section 11364 [Count 2-
12 possession of paraphernalia used for narcotics].

13 C. On or about December 16, 2005, Respondent pled guilty and was
14 convicted of violating Health and Safety Code section 11377(a) [possession of a
15 controlled substance]. Respondent was placed on deferred entry of judgment for
16 18 months.

17 SECOND CAUSE FOR DISCIPLINE

18 (Conviction of Possession of a Controlled Substance)

19 15. Respondent is further subject to disciplinary action under Code sections
20 492, 3750.5(a) and (d), in that she was convicted a crime for possession of a controlled substance,
21 to wit: methamphetamine, as more particularly described in paragraph 14, above, which is
22 incorporated by reference as if fully set forth herein.

23 THIRD CAUSE FOR DISCIPLINE

24 (Use of a Controlled Substance)

25 16. Respondent is further subject to disciplinary action under Code section
26 3750.5(b) in that she used a controlled substance, to wit: methamphetamine, as more particularly
27 described in paragraph 14, above, which is incorporated by reference as if fully set forth herein.
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License No. 9901, issued to PEGGY ERNA MUILWIJK,
2. Ordering PEGGY ERNA MUILWIJK to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring;
3. Taking such other and further action as deemed necessary and proper.

DATED: May 25, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant